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26 Oracle EMEA Limited

27 UNITED STATES DISTRICT COURT

28 NORTHERN DISTRICT OF CALIFORNIA

29 SAN FRANCISCO DIVISION

30 ORACLE USA, INC. *et al.*

31 No. 07-CV-01658 PJH (EDL)

32 Plaintiffs,

33 v.  
34 **DECLARATION OF HOLLY A.**  
35 **HOUSE IN SUPPORT OF**  
36 **PLAINTIFFS' MOTION TO**  
37 **COMPEL**

38 SAP AG, *et al.*,

39 Defendants.

40 Date: August 4, 2009  
41 Time: 9:00 a.m.  
42 Place: E, 15th Floor  
43 Judge: Hon. Elizabeth D. Laporte

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47 A/73075446.5/2021039-0000324170

48 Case No. 07-CV-01658 PJH (EDL)

49 DECLARATION OF HOLLY A. HOUSE IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL

1 I, Holly A. House, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California and  
 3 before this Court, and am a partner at Bingham McCutchen LLP, counsel of record for plaintiffs  
 4 Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited (together,  
 5 "Oracle") in this action. I have personal knowledge of the facts stated below and, if called as a  
 6 witness, could competently testify as to them.

7 2. Attached as **Exhibit A** is a true and correct copy of excerpts from  
 8 Plaintiffs' Second Set of Requests for Production of Documents to Defendants, served July 28,  
 9 2008, containing RFP Nos. 21 - 23 and 27.

10 3. Attached as **Exhibit B** is a true and correct copy of an excerpt from  
 11 Plaintiffs' First Set of Targeted Search Requests, served August 29, 2008.

12 4. Attached as **Exhibit C** is a true and correct copy of excerpts from  
 13 Defendants' responses to Plaintiffs' Second Set of Requests for Production of Documents from  
 14 Defendants, served August 27, 2008, containing Defendants' responses and objections to RFPs  
 15 21-23 and RFP 27.

16 5. Attached as **Exhibit D** is a true and correct copy of an excerpt from  
 17 Defendants' responses and objections to Plaintiffs' First Set of Targeted Search Requests, served  
 18 May 22, 2008, containing Defendants' responses and objections to subpart (l) of Plaintiffs' First  
 19 Targeted Search Request.

20 6. On June 11, 2009, Judge Hamilton signed the Parties' stipulated order  
 21 regarding changes to the case schedule. A true and correct copy of that order, Docket Item 325,  
 22 is attached as **Exhibit E**. As part of that order, "Defendants are granted leave to file on August  
 23 26, 2009, an additional summary judgment motion regarding Plaintiffs' royalty damages theory.  
 24 The Parties shall meet and confer as soon as possible to schedule on a priority basis what, if any,  
 25 discovery may be needed by Plaintiffs before filing of that motion." Exhibit E at 2. At the Case  
 26 Management Conference discussing this stipulation, which I attended, Judge Hamilton stressed  
 27 the importance of Oracle receiving any relevant discovery needed for its opposition to this  
 28 motion so as to avoid the necessity of a Rule 56(f) motion.

1                   7.     Because of the relevance to Defendant's hypothetical negotiations with  
 2 Oracle valuing the Oracle intellectual property ("IP") Defendants infringed, Oracle first served  
 3 discovery requests relating to SAP's IP and intangible asset valuation and licensing practices  
 4 (RFPs 23 and 27) in July 2008 and also requested this information in its First Targeted Search  
 5 Request, served in August 2008. Since then, it has questioned SAP witnesses, including board  
 6 members Henning Kagermann, Werner Brandt, Gerd Oswald, and Shai Agassi, on this topic.  
 7 Over the eleven months since the original requests for these documents, I and my colleagues  
 8 have participated in several meet and confers with Defendants regarding these requests.  
 9 Defendants have consistently refused to produce any responsive documents. On June 5, 2009,  
 10 Oracle sent another letter providing additional information for Defendants and seeking their final  
 11 position. On June 16, Defendants responded by letter and again refused to provide responsive  
 12 materials, arguing lack of relevance. Most recently, I spoke with Defendants' counsel via phone  
 13 on June 25, 2009, at which time Mr. Jason McDonell re-confirmed that the parties were joined  
 14 on this issue.

15                   8.     Oracle also seeks information related to SAP's historic applications sales  
 16 pipeline close rates and support contract renewal rates, responsive to RFPs 21 and 22. For nearly  
 17 a year, Defendants have objected to these requests and the parties have met and conferred about  
 18 them. On June 5, 2009, Oracle sent another letter providing additional information for  
 19 Defendants and seeking their final position. On June 16, 2009, Defendants offered in a letter to  
 20 discuss a compromise limited to information regarding TomorrowNow customers and the "list of  
 21 81." Most recently, I spoke with Defendants' counsel via phone on June 25, 2009, at which time  
 22 Mr. Jason McDonell re-confirmed that the parties were joined on this issue.

23                   9.     In this case, Oracle has produced intellectual property and intangible asset  
 24 valuations relating to the PeopleSoft and Siebel acquisitions. These produced documents, which  
 25 are similar to what Oracle seeks from Defendants regarding their own valuations, are discrete  
 26 analyses in a single document and were not burdensome to produce.

27                   10.    Press releases issued by SAP in association with the acquisitions of  
 28 MaXware, OutlookSoft, and Business Objects indicate that for each of these transactions the  
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1 predominant asset acquired was intellectual property and/or a customer base into which SAP  
2 hoped to sell its other applications.

3 11. Attached as **Exhibit F** is a true and correct copy of SAP's May 8, 2007  
4 press release discussing SAP's acquisition of OutlookSoft Corporation.

5 12. Attached as **Exhibit G** is a true and correct copy of SAP's May 14, 2007  
6 press release discussing SAP's acquisition of MaXware.

7 13. Attached as **Exhibit H** is a true and correct copy of SAP's undated press  
8 release discussing SAP's acquisition of Business Objects.

9 I declare under penalty of perjury under the laws of the State of California and the  
10 United States that the foregoing is true and correct, and that this Declaration was signed on June  
11 30, 2009 in San Francisco, California.



12 Holly A. House  
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